

NEBRASKA DISADVANTAGED BUSINESS ENTERPRISE UNIFIED CERTIFICATION PROGRAM

A. STATEMENT OF POLICY

It is the policy of all Nebraska recipients of United States Department of Transportation financial assistance (US DOT recipients), that Disadvantaged Business Enterprises (DBEs), as described in 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*, will have a level playing field on which to participate in US DOT-assisted contracts. In an effort to help remove barriers that may exist to the participation of all eligible DBE firms, and in accordance with 49 CFR Part 26, §26.81, the US DOT recipients have entered into this Agreement establishing a DBE Unified Certification Program (UCP).

The name of the UCP shall be the Nebraska Unified Certification Program (NUCP). The purpose of the NUCP is to simplify and create a more efficient DBE certification process. The NUCP will provide “one-stop shopping” for firms applying for DBE certification by recipients of US DOT financial assistance. This includes recipients of US DOT financial assistance from the Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), or the Federal Transit Administration (FTA). The NUCP will have one application, one certification process, and one decision, which will allow eligible firms to participate as DBEs anywhere in the state in the respective categories of work for which the firms are certified.

The NUCP will follow all certification procedures and standards of 49 CFR Part 26, §26.81 on the same basis as the US DOT recipients. The NUCP will cooperate fully with all oversight, review, and monitoring activities of the US DOT and its operating administrations. The NUCP will implement all US DOT directives and guidance concerning certification matters.

The US DOT recipients agree to commit sufficient resources and expertise to the NUCP to ensure the NUCP is capable of carrying out all of the requirements of 49 CFR 26.81. The NDOR currently maintains an up to date DBE directory on its website listing all NDOR certified DBE firms, and will also provide a printed version of the directory if requested to do so. The NDOR has the required expertise, and will provide any additional resources required to include all NUCP certified DBEs in the directory and keep it current once the NUCP Agreement is approved.

The NUCP shall be fully implemented and operational no later than eighteen (18) months following the approval of this agreement by the Secretary, as required by 49 CFR part 26, §26.81 (a)(2). (See Section H, “IMPLEMENTATION SCHEDULE”)

B. SIGNATORY PARTNERS:

The Signatory Partners to the NUCP include the Nebraska Department of Roads (NDOR), the Omaha Airport Authority (OAA), the Lincoln Airport Authority (LAA), Kearney Municipal Airport (KMA), the Nebraska Department of Aeronautics (NDA), Omaha Metro Area Transit (MAT), Lincoln StarTran, and the Lincoln Commission on Human Rights (LCHR). The Signatory Partners agree to the terms and conditions of the NUCP Agreement.

(a) The NDA will be the representative for all recipients of funds from the Federal Aviation Administration (other than the Omaha Airport Authority, Lincoln Airport Authority, and Kearney Municipal Airport) who must sign an Agency Agreement with the NDA that evidences their agreement to be bound by the terms and conditions of the NUCP.

(b) The Signatory Partners to the NUCP will ensure through subgrant agreements that subrecipients comply with all provisions of the NUCP (e.g., that they accept as DBEs firms that the NUCP has certified).

(c) In the event any additional entities in Nebraska become recipients of US DOT funds and are required to meet the DBE program requirements of 49 CFR Part 26, the NUCP will ensure that they become signatories to the NUCP agreement or indicate in writing their intent to be bound by the terms of the NUCP.

C. CERTIFICATION DETERMINATION PROCESS:

(a) The NUCP shall make all certification decisions on behalf of all US DOT recipients in the state with respect to participation in the DBE Program. All NUCP certification decisions will be based on the eligibility requirements contained in 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The NUCP will ensure that only applicants that fully meet all of the eligibility standards are certified as DBEs.

(1) Certification decisions by the NUCP shall be binding on all US DOT Recipients within the state limited to the nature of work the firms are certified to perform.

(2) The NUCP shall provide “one-stop shopping” to applicants for DBE certification, such that an applicant will be required to apply only once for certification that will be honored by all US DOT recipients in the state.

(3) All obligations of US DOT recipients with respect to certification and nondiscrimination as required by 49 CFR Part 26 will be carried out by the NUCP.

(4) All certifications made by the NUCP shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

(b) The NUCP will provide to applicants the Uniform Certification Application approved by US DOT pursuant to 49 CFR 26.83, which may be obtained directly from the Nebraska Department of Roads (NDOR), or downloaded from the NDOR website, www.dor.state.ne.us.

(c) If the applicant is certified by the US Small Business Administration (SBA), the application will be processed in accordance with 49 CFR 26.84.

(d) All applications for certification may be submitted directly to the NDOR (as the “one-stop shop”) or may be submitted directly to the appropriate NUCP Subcommittee. If the Aviation or Transit Subcommittee receives an application from a firm that is not primarily engaged in their respective specialized area (i.e. aviation concessionaire or transit concessionaire), the Subcommittee shall forward the application to the NDOR within 5 days of receipt. For applications submitted to the NDOR, the NDOR will conduct an initial review within 10 days of receipt of the application and:

(1) If the applications are from firms primarily providing construction orientated services and/or supplies, then the NDOR DBE Office staff will complete the application review, and the NDOR DBE Certification Review Board will make a certification determination using the process described in the NDOR DBE Program.

The NDOR DBE Certification Review Board shall consist of members appointed by the NDOR Director for a term to be determined by the Director. The Board currently has three members; however, the NDOR reserves the right of the Director to change the number of Board members if he/she determines it would be beneficial to do so.

(2) If the applications are from firms applying as aviation concessionaires, the NDOR will forward the applications to the Chair of the NUCP Aviation Subcommittee. The Chair will forward the application to the appropriate Aviation Subcommittee member who will review the application, investigate the applicant and make a recommendation to the other members of the Subcommittee regarding the certification. Upon receipt of a recommendation, the Subcommittee will consider the application and related information, and will make a certification determination by a majority vote of all members.

The Chair will advise the NDOR of the Subcommittee’s decision and provide a copy of the application and other related documents for appropriate recording.

The Aviation Subcommittee shall consist of one staff member each from the Nebraska Department of Aeronautics, the Omaha Airport Authority, Lincoln Airport Authority, and Kearney Municipal Airport. The Aviation Subcommittee was created by the NUCP, and its role is to certify aviation concessionaires.

(3) If the applications are from firms that are primarily transit concessionaires, vendors, or providers of other needed services; the NDOR will forward the applications to the Chair of the NUCP Transit Subcommittee. The Transit Subcommittee will then complete the application review and make a certification determination. The Chair will advise the NDOR of the Subcommittee's decision and provide a copy of the application and other related documents for appropriate recording.

The Transit Subcommittee shall consist of one staff member each from the Lincoln Commission on Human Rights, Metro Area Transit and one other transit representative as may be appointed by the NUCP. The Transit Subcommittee was created by the NUCP, and its role is to certify transit concessionaires.

(4) On-site reviews of firms applying for DBE certification whose home state is Nebraska will be conducted by the NDOR DBE Office staff or the appropriate NUCP Subcommittee that is responsible for processing the firms' application for certification. Any firm applying for DBE certification whose home state is other than Nebraska must first be certified in its home state. The NDOR or appropriate NUCP Subcommittee will obtain a copy of the firm's on-site review from its home state transportation agency.

(5) If an applicant firm indicates an interest in doing work that falls under the jurisdiction of more than one NUCP Subcommittee, the firm's dollar values of work it performs in the various jurisdictions will determine which Subcommittee will process the firm's application. As an example, if the firm performs more construction work than aviation or transit concessionaire work, the NDOR would process the firm's application.

(e) All applicants will be notified in writing by the NDOR or the appropriate Subcommittee as to who will be completing their application review and DBE certification process.

(f) The NUCP will not process an application for DBE certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which the firm maintains its principal place of business. The NUCP will share its information and documents concerning certified firms whose home state is Nebraska with other UCPs that are considering the firms' applications.

(g) Decisions on applications for DBE certification will be made by the NUCP within 90 days of receipt from the applicant firm all information required. The 90-day time period may be extended once, for no more than an additional 60 days, upon written notice to the firm explaining fully and specifically the reasons for the extension. If the NUCP fails to make a decision by the applicable timeline it is deemed a constructive denial of the application, on the basis of which the applicant firm may appeal to the US DOT under 49 CFR 26.89.

(h) Once the NUCP has certified a firm as a DBE, the firm shall remain certified for a period of three (3) years unless its certification has been removed through the procedures of 49 CFR 26.87. (A firm may have its DBE certification removed only by the NDOR or respective Subcommittee that certified the firm in the first instance.) DBE firms will not be required to reapply for certification as a condition of continuing to participate in the Program during this three-year period, unless the factual basis on which the certification was made changes. However, certified DBE firms shall annually submit to the NDOR a No Change Affidavit and Personal Net Worth (PNW) Statement, if required by 49 CFR Part 26. Currently, aviation concessionaires are not required to submit PNW Statements.

(i) All firms that are currently certified as DBEs under 49 CFR Part 26 on the date the NUCP is implemented and becomes operational shall be included in the Program. No action on the part of those currently certified firms shall be required to be included in the Program. The period of certification for those firms shall be three (3) years from the date of their most recent certification by the respective US DOT recipient.

(j) A unified DBE Directory listing will be maintained on the NDOR website, www.dor.state.ne.us/lettings/certified-dbes.htm, listing all NUCP certified firms, whether the firms are construction related or aviation or transit concessionaires, and the nature of work they are eligible to perform. The DBE Directory will also include the firm's addresses, telephone numbers, fax numbers, and the names of each firm's contact person. A printed version of the unified DBE Directory will also be maintained, and will be provided by the NUCP upon request.

The unified DBE Directory, electronic and printed version, will be updated by the NDOR as soon as possible after any changes occur. The NDOR will update the unified DBE Directory to reflect all changes no less than ten (10) days prior to any contract letting date.

The NDOR Construction Division Information Technology personnel and the DBE Office staff under the direction of the Highway Civil Rights Coordinator will be responsible for maintaining and updating the unified DBE Directory on the NDOR website. The NDOR DBE Office will be responsible for the preparation of the printed version of the unified DBE Directory. The NDOR will be responsible for the expense of maintaining the unified DBE Directory on the NDOR website and for the preparation of the printed version of the unified DBE Directory.

D. APPEALS OF DENIALS:

(a) Any firm denied DBE certification by the NUCP shall be eligible to reapply for certification one year after the date the denial became administratively final.

(b) If DBE certification is denied to a firm that is certified by the SBA, written notice will be provided to the SBA that includes the reasons for the denials, as required by 49 CFR 26.86(b).

(c) In the event an applicant is denied DBE certification by the NDOR or a NUCP Subcommittee, there will be no appeal process directly to the NUCP. Firms denied certification by the NDOR or a NUCP Subcommittee may appeal the decision to the US DOT within 90 days of the NDOR's or NUCP Subcommittee's decision. The appeal must be filed in writing to:

U. S. Department of Transportation
Office of Civil Rights
400 7th Street, S.W., Room 5414
Washington, DC 20590

E. REMOVAL OF DBE ELIGIBILITY

(a) Any person may file with the NUCP a written complaint alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. The confidentiality of complainants' identities will be protected as provided in 49 CFR 26.109(b).

(b) A third party complaint may be submitted directly to the NDOR or may be submitted directly to the appropriate NUCP Subcommittee. If the NDOR receives a third party complaint on a firm certified as an aviation or transit concessionaire, the NDOR will forward the complaint to the appropriate NUCP Subcommittee. If the Aviation or Transit Subcommittee receives a third party complaint on a firm certified by the NDOR, the Subcommittee will forward the complaint to the NDOR.

(c) Third party complaints will be processed by the NDOR or by the appropriate NUCP Subcommittee in accordance with the provisions of 49 CFR 26.87. The NDOR or the appropriate NUCP Subcommittee will provide written notice to the firm against which the third party complaint has been filed.

(d) Following a decision on a third party complaint, the decision maker will provide the firm and the complainant written notice of its decision setting forth the reasons for its decision. If the decision maker found there was no reasonable cause to believe the firm was ineligible for DBE certification, the complainant may appeal to the US DOT as provided in 49 CFR 26.89.

(e) NUCP-initiated proceedings. If, based on notification by a firm of a change in its circumstances or other information that comes to the NUCP's attention, it is determined that there is reasonable cause to believe that a currently certified firm is ineligible, the NUCP must provide written notice to the firm that the NUCP proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(f) US DOT directive to initiate proceedings.

(1) If the concerned operating administration determines that information in the NUCP's certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a currently certified firm does not meet the DBE eligibility criteria, the concerned operating administration may direct the NUCP to initiate a proceeding to remove the firm's DBE certification as required by 49 CFR 26.87.

(2) The concerned operating administration will provide the NUCP and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information as required by 49 CFR 26.87.

(3) The NUCP (the NDOR or the appropriate NUCP Subcommittee) will immediately commence and prosecute a proceeding to remove the firm's DBE eligibility as provided by 49 CFR 26.87.

(g) Hearing. When the NUCP notifies a firm that there is reasonable cause to remove its eligibility as provided in paragraphs (a), (e), or (f) of this section, the firm will be given an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments why it should remain certified.

(h) The firm has 15 days from receipt of the proposed decision to request in writing an informal hearing from the decision maker. If the firm does not make a timely request for a hearing, the decision becomes administratively final 16 days from the date of the decision.

(i) If a hearing is requested, such proceeding will be conducted in accordance with the provisions of 49 CFR 26.87. If an informal hearing is requested, the NDOR Director or the appropriate NUCP Subcommittee will appoint a Hearing Officer who is knowledgeable about the DBE Program to hear the appeal. The Hearing Officer will be someone who was not involved in the proposed decision to remove the firm's DBE eligibility. Following an informal hearing, the firm (and in the case of a third party complainant; the complainant) will be informed in writing of the final decision. A hearing decision becomes effective and is administratively final the day it is issued.

(j) If the firm is certified by the SBA, a written notice will be provided to the SBA that includes the reasons for the removal, as required by 49 CFR 26.87(h).

(k) The firm and/or the complainant may appeal the NDOR' or NUCP Subcommittee's final decision to the US DOT within 90 days of the date of the decision. The appeal must be in writing to:

Department of Transportation
Office of Civil Rights
400 7th Street, SW, Room 5414
Washington, DC 20590

(l) Pending the US DOT's decision, the NDOR' or NUCP Subcommittee's decision remains in effect.

F. RECIPROCITY:

(a) The NUCP may elect to enter into a written reciprocity agreement with UCPs in other states. The decision to execute such an agreement shall be made by a unanimous vote of the NUCP Signatory Partners.

G. NON-DISCLOSURE/CONFIDENTIALITY:

(a) The NUCP will safeguard from disclosure to unauthorized persons all information gathered as part of the DBE certification process that may reasonably be regarded as confidential business information, consistent with applicable Federal, state, and local law. Notwithstanding any contrary provisions of Federal, state, or local law, the NUCP will not release personal information submitted in response to the personal net worth requirement of 49 CFR 26.67 to a third party (other than US DOT) without the written consent of the submitter.

H. IMPLEMENTATION SCHEDULE:

Within 12 months following approval of this Agreement by the Secretary, the NDOR Information Technology personnel will have a NUCP unified DBE Directory listing on the NDOR website, and the DBE Office staff will have a printed version of the unified DBE Directory available for distribution.

Within 16 months following approval of this Agreement by the Secretary, the NDOR, and the NUCP Aviation and Transit Subcommittees will communicate the specifics of the NUCP to the public by publishing notices in the appropriate media, posting notices on the NUCP Signatory Partners' websites, and mailing notices to all major organizations that would have an interest in the NUCP. The NUCP shall be fully implemented and operational no later than 18 months following the approval of this agreement by the Secretary.

SIGNATURES

Nebraska Department of Roads

Nebraska Department of Aeronautics

Omaha Airport Authority

Lincoln Airport Authority

Kearney Municipal Airport

Omaha Metro Area Transit

Mayor, City of Lincoln

(For Lincoln StarTran and LCHR)